

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LEOPONA, INC. (D.B.A. AUDIOSOCKET),
a Delaware corporation; SARAH
SCHACHNER, a California resident; BRAD
COUTURE, a New Hampshire resident;

Plaintiffs,

v.

CRUZ FOR PRESIDENT, a Texas nonprofit
corporation; MADISON McQUEEN, a
California limited liability company;

Defendants.

NO.

COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND BREACH OF
LICENSE AGREEMENT

JURY DEMAND

NATURE OF ACTION

This is an action for breaches of music license agreements and copyright infringements arising from the unauthorized use of copyrighted music compositions and sound recordings owned by Plaintiffs Sarah Schachner and Brad Couture and licensed by Plaintiff Leopona, Inc. by Defendants Cruz for President and Madison McQueen.

PARTIES

1. Plaintiff Leopona, Inc., ("Audiosocket") is a Delaware corporation with offices in Seattle, Washington and New Orleans, Louisiana.

COMPLAINT FOR COPYRIGHT INFRINGEMENT AND
BREACH OF LICENSE AGREEMENT - 1

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

1 revenue and 50% of all performance royalty revenue, which is paid via performing rights
2 societies such as ASCAP, BMI and SESAC.

3 10. Audiosocket's Standard Artist Agreement allow the artists to retain ownership of
4 both the master sound recording and the publishing rights in their music composition. While
5 some artists choose exclusive agreements with Audiosocket, others are represented on a non-
6 exclusive basis. Artists receive 50% of the gross licensing revenue generated by their music.

7 11. Under its Artist Agreements, artists give Audiosocket permission to promote their
8 music to potential licensees for commercial purposes on a "pre-cleared" basis. Pre-cleared
9 licenses allow Audiosocket to grant a license on behalf of an artist without seeking additional
10 approval for any specific use or licensing term. Licensees often prefer pre-cleared music
11 because the license can be acquired quickly allowing them to complete projects with tight
12 deadlines.

13 12. However, as expressly stated in Audiosocket's Standard License Agreement, use
14 of licensed songs for any political purpose is prohibited.

15 13. The artists Audiosocket represents come from around the globe and their client
16 base is similarly distributed. The majority of artists and clients are U.S. based. Audiosocket has
17 licensed music to all of the major U.S. broadcasting networks and to global brands, such as
18 Starbucks, Microsoft and Volvo.

19 14. In 2011, Audiosocket built its MaaS (music as a service) technology. This
20 software allows media companies to integrate Audiosocket's music search technology,
21 delivering its content and licenses to end users. Vimeo, a leading online video platform has
22 integrated the MaaS technology, as has Monster, Tongal and The Associated Press. Through the
23 media companies that have integrated MaaS and its website at Audiosocket.com, Audiosocket
24 issues more than 1000 licenses per month.

25 15. All of Audiosocket's revenue is derived from licensing fees, as it does not charge
26 for the use of its technology. The company's growth and success is dependent upon licensees

1 complying with the terms of their music licenses. Pursuant to the terms of its agreements with its
2 artists, Audiosocket has a duty to assure that licenses are being used within the terms of each
3 license agreement it enters.

4 16. As the use of digital media and internet distribution has grown, there has been no
5 consistent and reliable way to identify and track intellectual property (IP) across digital
6 platforms. New digital distribution platforms on the Internet have made it nearly impossible for
7 IP owners to monitor and be properly compensated for the use of their property. Hundreds of
8 millions of dollars are lost annually due to a lack of a comprehensive technology for tagging,
9 tracking, compensating and protecting creative works.

10 B. The LicenseID™ Technology that Protects Audiosocket's Artists' Work.

11 17. LIDCORE, Inc., is a technology company and an affiliate of Audiosocket.
12 LIDCORE has developed a patent pending invention to enable the identification and monitoring
13 of intellectual property along with its associated data. LIDCORE's technology uses
14 watermarking to encode data into copyrighted media each time it is uploaded or downloaded for
15 licensing and distribution. LIDCORE's initial product, LicenseID™, encodes inaudible data into
16 a media file when it is licensed or downloaded by an end user. LicenseID allows the embedded
17 IP information to be revised and updated in real time. This allows rights holders/owners to track
18 copyrights at scale and ensure their property is protected and properly used.

19 18. LIDCORE's media monitors are able to find encoded files in any digital broadcast
20 and then report compliant and infringing uses back to the IP holders. The platform streamlines
21 and automates efforts to manage, settle, and collect for IP licensing violations.

22 19. Audiosocket uses LicenseID to identify infringements and enforce the IP rights of
23 its artists.
24
25
26

C. Madison McQueen's License Agreement for "Lens," Its Breach of that Agreement, and Madison McQueen's and Cruz for President's Copyright Infringements.

20. Through LicenseID, Audiosocket has confirmed that, on September 17, 2015, Madison McQueen employee Robert Perkins downloaded an Audiosocket-licensed music track called "Lens," which was created by Sarah Schachner ("Schachner"). Schachner has filed a US copyright application for the "Lens" music composition and sound recording.

21. On December 23, 2015, Defendant Madison McQueen, entered into Audiosocket's standard "Small Business Licensing Agreement" (the "Lens License Agreement"). Under the Lens License Agreement, Madison McQueen agreed to use "Lens" for the limited permitted purposes outlined in Audiosocket's Small Business Licensing Agreement. Madison McQueen identified the project (or "Work") in which "Lens" would be used only as "Victories." Madison McQueen did not disclose that "Victories" was in fact a political advertisement for Defendant Cruz for President.

22. The Lens License Agreement listed expressly permitted uses and restrictions on use of the composition and sound recording. Madison McQueen was allowed to use "Lens" for educational, entertainment or advertising videos distributed online, through public performances, or through 1,000 or fewer free DVDs. Madison McQueen was allowed to cause and permit others, including its clients, to distribute and publicly perform "Lens" in the same permitted ways.

23. The Lens License Agreement expressly prohibited Madison McQueen from using "Lens"

1. In any broadcast, cable, web television, video games, mobile applications, or radio;

2. In pornographic work;

3. For political purposes (including, but not limited to, supporting or opposing any government policy, government official, political action, or candidate for political office).

1 24. Madison McQueen also agreed to pay liquidated damages of \$25,000 for any
2 breach of the Lens License Agreement.

3 25. Through the use of LicenseID technology, Audiosocket has confirmed that,
4 despite its agreement to not use “Lens” for any political purposes, three days after entering into
5 the Lens License Agreement, Defendants Cruz and McQueen began broadcasting “Victories,” an
6 acclaimed political ad promoting and supporting U.S. Presidential candidate Ted Cruz, on
7 YouTube. The political ad uses “Lens” as its soundtrack throughout the entirety of the video.
8 “Victories” ends with an express confirmation by candidate Ted Cruz that he approves the ad
9 and text confirming it was “Paid for by Cruz for President.”

10 26. The LicenseID technology enables crawling of the web to scan for LicenseID
11 watermarked files within video content. The videos are decoded via the LicenseID decoder. If a
12 media file in question has been marked with LicenseID, the mark is extracted and a detection
13 notice is sent to the LicenseID dashboard. Audiosocket has confirmed, through LicenseID, that
14 “Victories” uses Audiosocket’s unique watermarked version of “Lens,” including that it was
15 licensed by Madison McQueen’s Robert Perkins via the downloaded Lens License Agreement.
16 “Victories” remains live on YouTube and is prominently displayed as a “Featured Video” on the
17 home page of the Cruz for President website. The “Victories” video has been viewed over
18 78,000 times on YouTube.

19 27. It gets worse. On February 24, 2016, nearly two months after Madison McQueen
20 and Cruz for President first went live with their unauthorized political use of “Lens,” but before
21 they broadcast “Lens” on cable television, Madison McQueen admitted it had no right to use
22 “Lens” on cable television. Madison McQueen employee Justin Folk contacted Audiosocket to
23 obtain a license to cover this more expansive use. When Folk disclosed that “Victories” was a
24 political ad, it was the first time that Audiosocket became aware “Lens” had been used for a
25 political purpose. Audiosocket reminded Folk of its prohibition on political uses of “Lens.”
26 Audiosocket attempted to accommodate Madison McQueen and Cruz for President by asking

Ms. Schachner if she was willing to permit the political use of her song. She declined. Although Audiosocket advised Madison McQueen that political use of “Lens” was not approved, Madison McQueen chose to ignore the political purpose and cable television restrictions and proceeded to cause “Lens” to be broadcast on cable channel Fox Business News no fewer than 86 times.

D. Madison McQueen’s Licensing Agreement for “Fear of Complacency,” Its Breach of that Agreement, and the Madison McQueen’s and Cruz for President’s Copyright Infringements.

28. Through LicenseID, Audiosocket has confirmed that, on September 17, 2015, Madison McQueen employee Robert Perkins downloaded an Audiosocket-licensed song called “Fear of Complacency,” which was created by Brad Couture (“Couture”). Couture has filed a US copyright application for the “Fear of Complacency” sound recording and music composition.

29. On January 25, 2016, Defendant Madison McQueen, entered into another Small Business Licensing Agreement (the “FoC License Agreement”) with Audiosocket. Under the FoC License Agreement, Madison McQueen agreed to use “Fear of Complacency” for the limited permitted purposes outlined in Audiosocket’s Small Business Licensing Agreement. Madison McQueen identified the project (or “Work”) in which “Fear of Complacency” would be used only as “Best to Come.” Madison McQueen did not disclose that “Best to Come” was in fact a political advertisement for Defendant Cruz for President.

30. The FoC License Agreement listed the same permitted uses and restrictions as the Lens License Agreement Madison McQueen purchased a month earlier. Madison McQueen was allowed to use “Fear of Complacency” only for videos distributed online, and to cause and permit others, including its clients, to distribute and publicly perform “Fear of Complacency” in the same permitted ways. Madison McQueen was expressly prohibited from publishing or performing “Fear of Complacency” or “[f]or political purposes (including, but not limited to, supporting or opposing any government policy, government official, political action, or candidate for political office).”

31. Madison McQueen also agreed to pay liquidated damages of \$25,000 for any breach of the FoC License Agreement.

32. Through the use of LicenseID technology, Audiosocket has confirmed that, shockingly, on January 24, 2016, one day before entering into the FoC License Agreement, Defendants Cruz and McQueen already had begun broadcasting a political commercial for candidate Cruz titled “Best to Come,” which uses “Fear of Complacency” as its soundtrack, on YouTube. “Best to Come” ends with an express confirmation by candidate Ted Cruz that he approves the commercial and text confirming it was “Paid for by Cruz for President.” Audiosocket has further confirmed, through LicenseID, that “Best to Come” uses Audiosocket’s unique, watermarked version of “Fear of Complacency,” including that it was licensed by Madison McQueen’s Robert Perkins via the downloaded FoC License Agreement. The “Best to Come” video has been viewed over 12,000 times on YouTube, where it remains live.

FIRST CAUSE OF ACTION

***Breach of Lens License Agreement – Claim by Audiosocket
against Defendant Madison McQueen***

33. Audiosocket incorporates by reference the allegations in the above paragraphs, as though fully set forth herein.

34. Pursuant to its Lens License Agreement with Audiosocket, Madison McQueen agreed it would not use “Lens” for any political purpose and that it would not cause “Lens” to be broadcast on cable television.

35. Madison McQueen breached its contractual obligation to not use “Lens” for a political purpose thousands of times. Madison McQueen breached its contractual obligation to not broadcast “Lens” on cable television at least 86 times.

36. Madison McQueen agreed to pay \$25,000 for each of its breaches and to reimburse Audiosocket its attorneys’ fees and costs.

37. Audiosocket is entitled to damages arising from Madison McQueen’s breaches of the Lens License Agreement in an amount to be determined at trial.

SECOND CAUSE OF ACTION
***Breach of FoC License Agreement – Claim by Audiosocket
against Defendant Madison McQueen***

38. Audiosocket incorporates by reference the allegations in the above paragraphs, as though fully set forth herein.

39. Pursuant to its FoC License Agreement with Audiosocket, Madison McQueen agreed it would not use “Lens” for any political purpose.

40. Madison McQueen breached its contractual obligation to not use “Lens” for a political purpose thousands of times.

41. Madison McQueen agreed to pay \$25,000 for each of its breaches and to reimburse Audiosocket its attorneys’ fees and costs.

42. Audiosocket is entitled to damages arising from Madison McQueen’s breaches of the FoC License Agreement in an amount to be determined at trial.

THIRD CAUSE OF ACTION
***Copyright Infringement – Unauthorized Performance of a Copyrighted Work
in an Audiovisual Work 17 U.S.C. § 106(4) – Claim by Ms. Schachner
Against Defendants Cruz for President and Madison McQueen***

43. Plaintiff Schachner incorporates by reference the allegations in the above paragraphs, as though fully set forth herein.

44. Ms. Schachner is the sole owner of the music composition and sound recording copyright in “Lens” and has filed a US copyright application for those works.

45. At no time have Defendants Cruz for President and Madison McQueen been granted a license or other authorization from Ms. Schachner to use either the music composition or the sound recording of “Lens” for political purposes or for broadcast on cable television. Accordingly, Defendants’ unauthorized use and broadcast of the music composition and sound recording of “Lens” in the “Victories” political ad infringes Ms. Schachner’s copyrighted works.

46. As a result of Defendants' actions as described above, Ms. Schachner has suffered damages and will continue to suffer damages in an amount that is presently unknown, but which exceeds \$75,000.

47. Defendants' infringement of Ms. Schachner's copyrighted works has caused and will cause irreparable harm to Ms. Schachner that cannot be fully compensated by money. Because Ms. Schachner has no adequate remedy at law, Ms. Schachner is entitled to a temporary restraining order, as well as preliminary and permanent injunctive relief prohibiting Defendants from using both the music composition and the sound recording of "Lens" without a license.

FOURTH CAUSE OF ACTION

***Copyright Infringement – Unauthorized Performance of a Copyrighted Work
in an Audiovisual Work 17 U.S.C. § 106(4) – Claim by Mr. Couture
Against Defendants Cruz for President and Madison McQueen***

48. Plaintiff Couture incorporates by reference the allegations in the above paragraphs, as though fully set forth herein.

49. Mr. Couture is the sole owner of the music composition and sound recording copyrights in “Fear of Complacency” and has filed a US copyright application for those works.

50. At no time have Defendants Cruz for President and Madison McQueen been granted a license or other authorization from Mr. Couture to use either the music composition or the sound recording of “Fear of Complacency” for political purposes. Accordingly, Defendants’ unauthorized use of the music composition and sound recording of “Fear of Complacency” in the “Best to Come” political ad infringes Mr. Couture’s copyrighted works .

51. As a result of Defendants' actions as described above, Mr. Couture has suffered damages and will continue to suffer damages in an amount that is presently unknown, but which exceeds \$75,000.

52. Defendants' infringement of Mr. Couture's copyrighted works has caused and will cause irreparable harm to Mr. Couture that cannot be fully compensated by money. Because Mr. Couture has no adequate remedy at law, Mr. Couture is entitled to a temporary restraining

1 order, as well as preliminary and permanent injunctive relief prohibiting Defendants from using
2 "Fear of Complacency" without a license.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for relief as follows:

6 1. For liquidated damages, attorneys' fees and costs, and prejudgment interest for
7 Defendant Madison McQueen's breaches of the Lens License Agreement and the FoC License
8 Agreement, the exact amount to be determined at trial;

9 2. For actual damages for Defendant Cruz for President's and Defendant Madison
10 McQueen's copyright infringements, the exact amount to be determined at trial;

11 3. For a preliminary and permanent injunctive relief prohibiting Defendants from
12 using "Lens" and "Fear of Complacency"; and

13 4. For such other and further relief as the Court may deem just and proper.

14
15 DATED this 9th day of May, 2016.

16 CAIRNCROSS & HEMPELMANN, P.S.

17
18 
19 Stephen P. VanDerhoef WSBA No. 20088
20 E-mail: svanderhoef@cairncross.com
21 524 Second Avenue, Suite 500
22 Seattle, WA 98104-2323
23 Telephone: (206) 587-0700
24 Facsimile: (206) 587-2308
25 Attorneys for Plaintiffs
26